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## LAW AND VALUES IN GOVERNANCE: THE SINGAPORE WAY

Eugene Kheng-Boon Tan\*

*The article examines the role of law and the legal system in catalysing Singapore's development success. It argues that there is a dichotomy in the approach with regard to commercial law and law relating to individual freedom and rights and civil society. Universalism characterises the treatment of commercial laws while cultural relativism and a communitarian-based understanding of rights and obligations are features of the law relating to the rights of the individual. Instrumentalism, driven by a particularistic 'communitarian' political philosophy underpinned by strong Confucianist values, is very much motivated by the need for good governance as a prerequisite for economic growth and to nourish the nascent nation-building process. This helps to explain the universalism-relativism dichotomy in the approach to different laws. While it is argued that there is a strong element of instrumentality in its treatment of the legal system and the law, the government has always been careful to ensure that the laws and the legal system enjoy widespread public support and legitimacy. Such a trend is also anticipated for the Hong Kong SAR, another ethnic Chinese-majority political entity, provided that political expediency and a neo-colonial attitude are not the motivating concerns of the Beijing government.*

### Introduction

The 'East Asian Miracle' had been forlornly described as a myth during the economic tailspin that swept across the region in the last years of the twentieth-century. Singapore has, however, weathered the turmoil relatively well. This can be attributed to the premium placed on good governance, engendering an abiding commitment to a stable and efficient legal system coupled with respect for laws and authority ever since sudden statehood was thrust upon Singapore. Yet one can discern a norm of instrumentality in the treatment of law vis-à-vis the government's development agenda and a dichotomy in the approach towards law in the commercial and non-commercial spheres.

Singapore has acceded to many international treaties in the economic and commercial arena. Characterised by universal applicability and conformity to international norms 'universalism' distinguishes the legal regime governing economic activity in Singapore. On the other hand, cultural relativism and a communitarian-based understanding of rights and obligations are features of

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the approach towards law relating to the rights of the individual. The internationalisation of law in supposedly cultural-specific and value-laden areas, like political governance and human rights, is deliberately limited.<sup>1</sup> Lacking natural resources, the constant and near-obsessive concern with survival and a siege mentality heightens the need for law, order and social discipline as the cornerstones of a viable open economy and sovereign state. Foreign critics have described the laws relating to individuals and non-governmental organisations as unduly harsh for the alleged abuses of human rights and curtailment of civil liberties.<sup>2</sup> The Singapore government has justified the 'different standard' used in matters of personal liberty on the basis of cultural relativism and a communitarian-based understanding of rights and obligations. Within the communitarian framework, law is a means to the end of enhancing and enforcing state interests and objectives, as defined by the political élites.<sup>3</sup>

This article is divided into three parts. In the first part, a sketch of the political and legal system and the sources of law in Singapore are presented. The views of founding Prime Minister Lee Kuan Yew on the role of law in developing Singapore, in particular the instilling of social discipline are also considered. Lee's views still resonate within the Singapore political élites' psyche. Part Two considers the approach towards laws relating to individuals and civil society. Part Three examines the universalistic approach towards commercial law in Singapore in creating a business-friendly environment as a *sine qua non* for a state that needs to remain plugged into the international economic architecture. In Parts Two and Three, references will be made to selected laws to explicate the nuanced yet different approaches towards the different fields of law. Although this article's focus is Singapore, a brief attempt will also be made to compare Singapore's experience with that of the Hong Kong Special Administrative Region (SAR) on the role of law and values in the governance of two (predominantly Chinese) former British island colonies.<sup>4</sup> Given the political realities and matrix in Chinese politics, it is suggested that the Chinese political values would increasingly influence the development of the Hong Kong SAR. The overlaying of the British Hong Kong system with a different value and legal system would ultimately result, like in Singapore's case, in an autochthonous politico-legal system.

<sup>1</sup> See discussion in Simon S C Tay, *The Singapore Legal System and International Law: Influence or Interference*, in Kevin Y L Tan (ed), *The Singapore Legal System* (Singapore: Singapore University Press, 2nd ed, 1999).

<sup>2</sup> See, for example, Beatrice S Frank, et al, *The Decline in the Rule of Law in Singapore and Malaysia: A Report of the Committee on International Human Rights of the Association of the Bar of the City of New York* (New York: The Association of the Bar of the City of New York, 1990); and Asia Watch, *Silencing all Critics: Human Rights Violations in Singapore* (New York: Asia-Watch, 1989).

<sup>3</sup> For an exposition of the statist understanding of the rule of law vis-à-vis state-building and a managed form of capitalism, see introduction in Kanishka Jayasuriya (ed), *Law, Capitalism and Power in Asia: The Rule of Law and Legal Institutions* (London and New York: Routledge, 1999).

<sup>4</sup> Despite the apparent similarities, Hong Kong and Singapore are very different societies.

## Political and legal framework: autochthonous innovations to colonial legacy

The Singapore government's ability to implement constitutional and legal changes stems from the ruling People's Action Party's hegemonic dominance of the political system. Since 9 August 1965, Singapore has been a sovereign republic with a Westminster-modelled parliamentary system of government. The organs of state — the executive, the legislature and the judiciary — are provided for in a written constitution. The Head of State is the President, although elected by popular mandate, exercises essentially custodial powers and ceremonial duties. From 1968 to 1981, the People's Action Party (PAP) was the only elected party in Parliament. Even then, the PAP had more than a two-thirds majority in Parliament. This allowed the PAP government to make fundamental and swift changes to Singapore society through the legal system. In the last general elections in January 1997, the PAP won 81 of 83 seats. The PAP also increased its share of total votes polled to about 65 percent from 61 percent in the 1991 election.<sup>5</sup>

The inherited common law based legal system is a legacy of Singapore's British colonial past, which began when Sir Stamford Raffles of the British East India Company founded Singapore in 1819.<sup>6</sup> The development of an autochthonous legal system is a more recent phenomenon. The current Chief Justice has underscored the importance of evolving 'a body of autochthonous case law, capable of responding to the needs and concerns of the people who live and do business in Singapore'.<sup>7</sup> Indeed, the confidence that accompanied successful state building bred further confidence and the belief that Western models are not entirely appropriate for Singapore. This dovetails with the abiding belief in the patent need of a 'Singapore way': a model of development that is coterminous with her societal values and development objectives, in contradistinction to prevailing Western norms.

### *The judiciary*

Until recently, Singapore's highest court was the Judicial Committee of the Privy Council in London. With the abolishment of all rights of appeal to the Privy Council since 8 April 1994, the final appellate court in Singapore for both civil and criminal matters is the Singapore Court of Appeal. Given that

<sup>5</sup> For a recent analysis of PAP's political dominance, see James V Jesudason, 'The Resilience of One-Party Dominance in Malaysia and Singapore,' in Hermann Giliomee and Charles Simkins (eds), *The Awkward Embrace: One-party Domination and Democracy* (Amsterdam: Harwood Academic, 1999).

<sup>6</sup> See also Helena H M Chan, *The Legal System of Singapore* (Singapore: Butterworths, 1995).

<sup>7</sup> Yong Pung How, 'The Courts in the 21st Century: A Framework for Change,' in Arun Mahizhnan and Lee Tsao Yuan (eds), *Singapore: Re-engineering Success* (Singapore: Oxford University Press, 1998). The case for autochthony was first argued by Andrew Phang in his *The Development of Singapore Law: Historical and Socio-Legal Perspectives* (Singapore: Butterworths, 1990).

economic prosperity is of vital importance, the government cut the juridical apron strings only when the legal system had gained the confidence and trust of the international business community. In part, the delay of almost 30 years after independence in having an indigenous court as the highest court was the conscious consideration that the legal system plays a vital role in attracting global capital.

The aim of an efficient legal system is very much driven by the government, with full support of the judiciary. In recent years, there have been many appointments of Judicial Commissioners (JCs) to complement the Supreme Court Judges. Although they exercise the powers and perform the functions of a Supreme Court Judge, JCs do not enjoy security of tenure and are appointed for such period(s) as the President thinks fit.<sup>8</sup> Many JCs were appointed after Justice Yong Pung How's elevation to Chief Justiceship in September 1990. The aim was to clear 'the problem of a large and embarrassing backlog' of cases. With the backlog now cleared, the trend is towards providing 'useful exposure to judicial experience' to practising lawyers, government legal officers and law academics.<sup>9</sup>

The Subordinate Courts play a vital role in the administration of justice in Singapore as an estimated ninety-five percent of all court cases in Singapore are handled in these courts.<sup>10</sup> Under the Subordinate Courts Act (Cap 321), a District Judge and a Magistrate can be appointed after a minimum of five years and one year respectively as a 'qualified person' under the Legal Profession Act (Cap 161).<sup>11</sup> As public servants, the judicial officers in the Subordinate Courts do not enjoy security of tenure but their powers are fairly extensive. For instance, a District Court can impose, upon conviction, sentences of jail terms up to seven years, a maximum fine of S\$10,000 and 12 strokes of the cane as well as reformatory training. In civil cases, they have the jurisdiction to hear cases where the amount claimed does not exceed S\$250,000. A Magistrates' Court can pass jail terms up to two years, a maximum fine of S\$2,000 and 6 strokes of the cane.<sup>12</sup> In civil matters, the jurisdiction of Magistrates' Courts is limited to claims not exceeding S\$60,000. These officers are moved regularly between the Attorney-General's Chambers and the Subordinate Courts; it is this regular movement of the lower level judicial officers between the two offices, Jayasuriya

<sup>8</sup> Article 94(4) of the Constitution of the Republic of Singapore, 1999 Reprint.

<sup>9</sup> Remarks of Chief Justice Yong Pung How at his Welcome Reference, 8 October 1990. See Hoo Sheau Peng, Lee Shen Dee, Phang Hsiao Chung and See Kee Orr (eds), *Speeches and Judgements of Chief Justice Yong Pung How* (Singapore: FT Law and Tax Asia Pacific, 1996), p 27.

<sup>10</sup> Comprising of the District Court, Magistrates' Court, Family Court, Juvenile Court, Coroner's Court and the Small Claims Tribunal, the Subordinate Courts are presided over by the Senior District Judge and other judicial officers. See the Subordinate Courts' Internet website, <http://www.gov.sg/judiciary/subct/index1.html>

<sup>11</sup> See ss 9(3) and 10(2), Subordinate Courts Act (Cap 321). The requirements for a 'qualified person' are found in s 2, Legal Profession Act (Cap 161).

<sup>12</sup> Sections 11(3) and 11(5), Criminal Procedure Code (Cap 68).

argues, that allows for the 'inoculation of Singapore's corporatist ideology' within the judiciary.<sup>13</sup>

The values of a society are often reflected in its laws and legal system. For instance, the Family Court, established in March 1995, is in line with the national value of family as the basic unit of society. It has the jurisdiction of a District Court and is a one-stop centre for all family law-related matters.<sup>14</sup> There is also the Maintenance of Parents Act (Cap 167B) by which parents can seek legal redress if their children do not adequately support them in their old age. In line with the aim of encouraging a non-litigious population, the Small Claims Tribunal, set up in 1985, is meant to be an inexpensive and informal means of settling disputes. It has the jurisdiction to hear and determine any claim relating to a dispute arising from any contract for the sale of goods or the provision of services. The jurisdiction of the tribunal is limited to claims of up to S\$10,000 or, if the parties consent, claims of up to S\$20,000. No lawyers are allowed in cases before the Small Claims Tribunal. Additionally, alternative dispute resolutions encompassing arbitration, negotiation, and mediation are strongly advocated over litigation.<sup>15</sup> This is also consistent with the prevailing commercial trends towards non-litigious modes of settling disputes. Within the Subordinate Court, the supporting institutional mechanism is the recently created Primary Dispute Resolution Centre, which aspires 'towards a model of mediation which will suit the multi-cultural Singaporean context'.<sup>16</sup> Two Community Mediation Centres have also been established to promote local community mediation.

#### *Sources of law: instilling the Singapore element*

The variety of sources of law reflects Singapore's historical development from a British colony to its short-lived membership in Malaysia, and to the measured quest to develop an autochthonous legal system.<sup>17</sup> One consistent theme that runs through these major constitutional changes is the securing of the continuing

<sup>13</sup> Kanishka Jayasuriya, 'Corporatism and Judicial Independence within Statist Legal Institutions in East Asia,' in Kanishka Jayasuriya (ed), *Law, Capitalism and Power in Asia*, (note 3 above) p 185.

<sup>14</sup> The Family Court seeks to promote the harmonious resolution of family disputes. Mediation and counselling services are provided as part of the Court's set-up. The Court hears all applications for maintenance, protection and adoption orders as well as applications involving property disputes between spouses, petitions for matrimonial relief and ancillary applications under the Women's Charter (Cap 353).

<sup>15</sup> For a discussion of the alternative dispute resolution regime in Singapore, see Joel Lee Tye Beng, 'The ADR Movement in Singapore,' in Kevin Y L Tan (ed), *The Singapore Legal System*.

<sup>16</sup> See <http://www.gov.sg/judiciary/subct/courts/mediation.html>

<sup>17</sup> The five main sources of Singapore law are: (1) legislation (including subsidiary legislation) passed by the Singapore Parliament and its predecessors; (2) case law as decided by the Singapore courts and its predecessor institutions; (3) the law of England as it stood on 27 November 1826; (4) imperial statutes enacted when Singapore was part of the British Empire; and (5) English law made applicable by virtue of the now repealed s 5 of the Civil Law Act (Cap 43). A succinct treatment of the sources of Singapore law can be found in Walter Woon's chapter on Singapore in Poh-Ling Tan (ed), *Asian Legal Systems: Law, Society and Pluralism in East Asia* (Sydney: Butterworths, 1997), pp 335-341.

application of prior existing law, which had served Singapore well.<sup>18</sup> As a common law legal system, the doctrine of binding precedent (*stare decisis*) prescribes that judicial precedents must be followed in a prescribed manner. However, the operation of *stare decisis* is complicated in Singapore as a result of its constitutional history.<sup>19</sup> The *de facto* binding nature of English judicial decisions in Singapore has resulted in the 'impoverishment of the common law in Singapore'.<sup>20</sup>

The Gordian knot of binding precedents was loosened with the unprecedented Practice Statement on Judicial Precedent of 11 July 1994. It declares that the advice of the Privy Council in London, its predecessor courts and its own prior decisions no longer bind the Singapore Court of Appeal.<sup>21</sup> The Practice Statement reasons that:

The development of our law should reflect these changes [the political, social and economic circumstances that have changed enormously since Singapore's independence] and the fundamental values of Singapore society.

Yet the Practice Statement's applicability is limited to the Court of Appeal. Bartholomew foresaw that English judicial decisions would be relegated to the 'deemed persuasive' category, which would be 'followed only to the extent to which they command respect and are compatible with the social and economic requirements' of Singapore.<sup>22</sup>

Indeed, compatibility with Singapore's social and economic requirements would be the benchmark in a more selective use of foreign precedents and in the development of Singapore's legal system. With the gradual development of a Singapore jurisprudence, more local cases are being cited in arguments and judgements.<sup>23</sup> In tandem with the move to be more assertive in the development of local jurisprudence, the Application of English Law Act (Cap 7A), which

<sup>18</sup> Philip N Pillai and Kevin Tan Yew Lee, 'Constitutional Development,' in Kernal Singh Sandhu and Paul Wheatley (eds), *Management of Success: The Moulding of Modern Singapore* (Singapore: Institute of Southeast Asian Studies, 1989), p 653. Article 162 of the Constitution provides for the continuation of all prior existing law which had effect as part of the law of Singapore immediately before the commencement of the Constitution.

<sup>19</sup> Woon (note 17 above), pp 339-341. At least twelve courts from British India, the Straits Settlements and Malaysia can claim to be predecessors of the present Court of Appeal. Further, and more interestingly, the decisions of English House of Lords were treated to all intents and purposes as being binding in fact, if not in law.

<sup>20</sup> See Andrew Phang, *The Development of Singapore Law* (note 7 above). Phang, at p 84, suggests that there was a 'slavish adherence to English law'.

<sup>21</sup> The Practice Statement can be found at [1994] 2 Singapore Law Reports 689.

<sup>22</sup> G W Bartholomew, 'The Singapore Legal System,' in Kernal Singh Sandhu and Paul Wheatley (eds), *Management of Success: The Moulding of Modern Singapore* (Singapore: Institute of Southeast Asian Studies, 1989), p 642.

<sup>23</sup> The first volumes of the *Halsbury's Laws of Singapore* (Singapore: Butterworths Asia, 1998) are now available. A comprehensive treatment of the changes in the laws of Singapore and the legal system between 1990 and 1995 can be found in Singapore Academy of Law, *Review of Judicial and Legal Reforms in Singapore between 1990 and 1995* (Singapore: Butterworths, 1996).

came into force on 12 November 1993, seeks to delineate the extent to which English law is applicable in Singapore. In many respects, Singapore's apron strings to English law are slowly being cut although English law will continue to be persuasive and followed, especially in the commercial realm. To ensure that the legislative intents are attained, the judiciary is allowed to purposively interpret legislation. The guideline, outlined in section 9A of the Interpretation Act (Cap 1), is to adopt an interpretation that promotes the purpose or object underlying the written law by looking at extrinsic material, inter alia, the explanatory statement of the Bill and parliamentary record of debates. Given the PAP's dominance of Parliament, this would facilitate the achievement of the desired ends of the various legislation.

## **The community in the law**

### *The primacy of cultural values*

The manner in which the laws and the legal system evolve depends very much on the role law is expected to serve in that society. The approach towards law in Singapore has been greatly moulded by Cambridge-trained lawyer Lee Kuan Yew, Singapore's Prime Minister from 1959 to 1990. A motivating Hobbesian theme in Lee's thinking was that man is inherently bad.<sup>24</sup> Further, influenced by neo-Confucian thinking on the role of government, Lee is of the view that leaders have a moral duty to act in the collective interest and it is from this that they derive their moral authority.<sup>25</sup>

The first priority of the PAP government on winning the 1959 elections was to secure law and order in a Singapore stricken with latent communalism and nascent communism. For Lee, the government's responsibility was to ensure the individual's fundamental freedoms - not civil and political rights but rather socio-cultural and economic rights. These included personal safety, opportunities to obtain food and shelter, education and jobs. Only when the people's primary needs were met could foreign investors be persuaded to invest. The 'Singapore Way' is not only premised on the fact that Singapore society is organised differently from the West but that the law has a different role too. In Western societies, law serves to protect the individual from the state. By contrast, law in Singapore tends to place relatively more importance on community interests. Further, while the law does protect the individual, law is also mobilised to

<sup>24</sup> Lee said in 1994 in New Zealand, that "[h]uman beings, regrettable though it may be, are inherently vicious and have to be restrained from their viciousness". See Han Fook Kwang, Warren Fernandez and Sumiko Tan, *Lee Kuan Yew: The Man and His Ideas* (Singapore: Times Editions and The Straits Times Press, 1998), p 194.

<sup>25</sup> It is perhaps Lee's exposure to Western society as an undergraduate that convinced him that Western values differed from the socio-cultural value system he came from. See, for instance, Lee Kuan Yew, *The Singapore Story: Memoirs of Lee Kuan Yew* (Singapore: Times Editions and Straits Times Press, 1998), pp 129-130.



enable the state to fulfil its development objectives. As Lee emphatically put it:<sup>26</sup>

The basic difference in our approach springs from our traditional Asian value system, which places the interests of the community over and above that of the individual. In English doctrine, the rights of the individual must be the paramount consideration, we shook ourselves free from the confines of English norms which did not accord with the customs and values of Singapore society.

Indeed, this is one aspect of what is popularly known as the 'Asian Values' debate that has attracted much controversy.<sup>27</sup> Lee's preference for a well-ordered society is evident:<sup>28</sup>

But as a total system [the American system], I find parts of it totally unacceptable: guns, drugs, violent crime, vagrancy, unbecoming behaviour in public — in sum the total breakdown of civil society. The expansion of the right of the individual to behave or misbehave as he pleases has come at the expense of orderly society. In the East the main object is to have a well-ordered society so that everyone can have maximum enjoyment of his freedoms. The freedom can only exist in an ordered state and not in a natural state of contention and anarchy.

Lee maintains that cultural values of Asia are indispensable in the rise of Asia and the recovery from the crisis. For Lee, good government is what people want and this is premised on the primacy of economic development. To quote Lee on his conception of good government:<sup>29</sup>

This depends on the values of a people. What Asians value may not necessarily be what Americans or Europeans value. Westerners value the freedoms and liberties of the individual. As an Asian of Chinese cultural background, my values are for a government which is honest, effective and efficient in protecting its people, and allowing opportunities for all to

<sup>26</sup> Address by then Prime Minister Lee Kuan Yew at the Opening of the Singapore Academy of Law, (1990) 2 Singapore Academy of Law Journal 155.

<sup>27</sup> For a penetrating analysis of human rights and 'Asian Values', see, generally, Joanne R Bauer and Daniel A Bell (eds), *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999); Wm Theodore de Bary, *Asian Values and Human Rights: A Confucian Communitarian Perspective* (Cambridge, MA: Harvard University Press, 1998); Diane K Mauzy, 'The Human Rights and "Asian Values" Debate in Southeast Asia: Trying to Clarify the Key Issues' (1997) *The Pacific Review* 210; and Yuen Chung Kwong, 'Leninism, Asian Culture and Singapore' (1999) 27 *Asian Profile* 217.

<sup>28</sup> Fareed Zakaria, 'Culture is Destiny,' (interview with Lee Kuan Yew) (1994) 73(2) *Foreign Affairs* 109.

<sup>29</sup> Han et al (note 24 above), p 380.

advance themselves in a stable and orderly society, where they can live a good life and raise their children to do better than themselves ... Very few democratically elected governments in the Third World uphold these values. But it is what their people want ... It is Asian values that have enabled Singapore to contain its drug problem ...

In January 1999, Lee, however, stated that he had in his speeches all along referred to 'Confucianist values' rather than 'Asian values'. Lee said, 'When the West, especially Western journalists, use the term "Asian values", they mean it as an antithesis to Western values. But there are actually many kinds of Asian values'. He asserted that it was the non-observance of Confucianist values that had aggravated the Asian crisis. Lee also stressed that an individual's rights could not override society's rights, and this value, in his view, had not changed despite the Asian economic crisis.<sup>30</sup> On the diplomatic front, Singapore's senior diplomats, Kishore Mahbubani and Bilahari Kausikan, have been the most vocal proponents of 'Asian values'.<sup>31</sup> For instance, Kausikan argues that:<sup>32</sup>

... [T]he key issue is not the difference between 'Asian' and 'Western' values, let alone the superiority or inferiority of any one set of values to another. It is not even what is distinctively or characteristically Asian about any particular set of values. Today's 'Asian values' debate is basically about Asian societies' future direction and development ... the question now being asked ... is how to sustain development over the long term, bearing in mind the pitfalls and dead ends that have confronted many more developed (mainly Western) societies ... In debating 'Asian values,' they are examining such issues as the responsibilities of individuals to society as a whole, the role of family, the integrity of public institutions, and the maintenance of law and order — issues that are also widely debated in the West. Whatever the debate over 'Asian values' may be, then, it is not a clash

<sup>30</sup> "Asian values"? I didn't use this term, says SM,' The Straits Times, 30 January 1999, p 6; 'Looking to the Future,' *Asiaweek*, 21 May 1999, p 34.

<sup>31</sup> See Kishore Mahbubani, 'The West and the Rest' (1992) 28 *The National Interest* 3; 'The Dangers of Decadence: What the Rest Can Teach the West' (1993) 72(4) *Foreign Affairs* 10. Both articles are reproduced in Kishore Mahbubani, *Can Asians Think?* (Singapore: Times Editions, 1998). See also Bilahari Kausikan, 'An East Asian Approach to Human Rights' (1995-96) 2 *Buffalo Journal of International Law* 263.

<sup>32</sup> Bilahari Kausikan, 'The "Asian Values" Debate: A View from Singapore,' in Larry Diamond and Marc F Plattner (eds), *Democracy in East Asia* (Baltimore and London: Johns Hopkins University Press, 1998), pp 24-25. Cf Stephanie Lawson, 'Confucius in Singapore: Culture, Politics, and the PAP State,' in Peter Dauvergne (ed), *Weak and Strong States in Asia-Pacific Societies* (St Leonards, NSW: Allen & Unwin in association with the Dept of International Relations, Research School of Pacific and Asian Studies, Australian National University, 1998); and Chua Beng Huat, 'Asian Values' Discourse and the Resurrection of the Social' (1999) 7 *Positions: East Asian Cultures Critique* 573. A commentator has referred to the values debate as a matter of 'cultural-ideological predilection,' see Linda Y C Lim, 'Whose Model Failed? Implications of the Asian Economic Crisis' (1998) 21(3) *The Washington Quarterly*, 25.

of civilisations ... The real debate is ... about which values, in what degree and in what proportions, are necessary for sustained development, the maintenance of social cohesion, and the avoidance of serious problems ... The appropriate balance between different sets of values — between individual rights that guarantee personal freedom, and social issues that stem from the society's needs for stability and discipline — depends on the particular circumstances of each society. The balance in each country will therefore shift over time, and not only in one direction.

In effect, Lee's conception of good government stresses economic and social rights rather than civil-political rights. This is similar to the position taken by some Asian states at the Vienna human rights conference in 1993.<sup>33</sup> Under this conception, society takes precedence over the individual. Ultimately, whether Confucianist or Asian values is a viable alternative form of governance is a non-issue since Confucianist values can be debased. What happened in Asia was the abuse of state resources for personal and family gain.

This idea and belief of collective security, manifested in the community's interests gaining precedence over the individual has been popularly characterised in Singapore as 'communitarianism'.<sup>34</sup> This communitarian ideology has since been concretised as 'Shared Values'. Introduced in January 1993, they are (1) Nation before community and society above self; (2) Family as the basic unit of society; (3) Community support and respect for the individual; (4) Consensus, not conflict; and (5) Racial and religious harmony.<sup>35</sup> Originally couched as a national ideology (not unlike Indonesia's *Pancasila* and Malaysia's *Rukunegara*), it is meant as an axiom of faith by which Singaporeans of all races and religious beliefs could subscribe to and live by.<sup>36</sup> The drive towards nation-building is increasingly evident. The corporatist principle of the Shared Values is now supplemented by the 'Singapore 21 Vision', which calls for 'social tripartism' in 'building a vision for the future ... to make Singapore our best home'.<sup>37</sup> Social tripartism — comprising the people, private and public sectors,

<sup>33</sup> See James T H Tang (ed), *Human Rights and International Relations in the Asia-Pacific Region* (London: Pinter, 1995).

<sup>34</sup> For a useful primer on Western philosophical conception of communitarianism, see Stephen Mulhall and Adam Swift, *Liberals and Communitarians* (Oxford: Blackwell, 2nd ed, 1996).

<sup>35</sup> White Paper on *Shared Values* (Cmd 1 of 1991). However, the Shared Values lack constitutional and legal standing.

<sup>36</sup> The aim is 'to sculpt a Singaporean identity by incorporating the relevant parts of our various cultural heritages as well as the attitudes and values which have helped us survive as a nation. It would also help safeguard against undesirable values permeating from more developed countries which may be detrimental to our social fabric', see Singapore's 'national website', 'Singapore Infomap' at <http://www.sg/flavour/values-bg.html>.

<sup>37</sup> The components of the Singapore 21 Vision, which seeks to develop a 'Singapore heartbeat', are: (1) Every Singaporean matters; (2) Strong Families: Our Foundation and Our Future; (3) Opportunities for all; (4) The Singapore Heartbeat: Feeling passionately about Singapore and (5) Active citizens: Making the difference. See *Singapore 21: Together We Make the Difference* (Singapore: Singapore 21 Committee, 1999).

is a genus of Singapore's unique model of labour tripartism involving the trade unions, employers and government.<sup>38</sup>

### *Law as social discipline*

The need for social discipline within Singapore society has always been emphasised by the Singapore leadership. The premise is that only with law and order and a strong commitment to social discipline would foreign investors invest in Singapore. Since attaining self-government in 1959, Singapore has mobilised the legal system to instill social discipline. Labour legislation was one of the first areas to receive the government's attention since Singapore needed foreign investments for its economic take-off and to attain some degree of self-sufficiency. This was aided by the close symbiotic relationship between the PAP and the state-sponsored National Trade Union Congress (NTUC).<sup>39</sup> These legal changes took place under the fledgling tripartite partnership of the government, employers and employees, which reduced industrial actions to being footnotes in Singapore's industrial history.<sup>40</sup> It is this symbiotic relationship that has generated an admirable resolve in coping with the recent economic downturn.<sup>41</sup> In November 1998, the government accepted the recommendation of the National Wages Council (a tripartite body that advises the government on wages) of a five to eight percent wage cut to top up the proposed ten percentage point cut in employers' monthly Central Provident Fund contributions (compulsory savings scheme). Taken together, these cuts slashed wage costs by 15 percent and brought Singapore's labour costs relative to that of other countries in the region to 1994 levels. This measure was regarded as decisive in Singapore's vigorous recovery and achieving 5.6 percent growth for 1999.

Taking advantage of industrial peace and a pro-business environment since 1965, multinational corporations in diverse industries have established themselves in Singapore. The prevalence of industrial peace and a well-educated work force make Singapore attractive to foreign capital. It is this combination of restrictive labour laws and the tripartite partnership —

<sup>38</sup> 'New model of partnership "can help fulfil Singapore 21 vision"', *The Straits Times*, 10 May 1999, p 3.

<sup>39</sup> NTUC's Secretary-General is also a Minister of Cabinet-rank. Indeed, several Ministers of State and PAP Members of Parliament are or were closely associated with the NTUC. See also People's Action Party, 'For People through Action by Party' (Singapore: People's Action Party) pp 28-38.

<sup>40</sup> On Singapore's unique tripartism and labour legislation, see, generally, Venkatraman Anantaraman, *Singapore Industrial Relations* (Singapore: Singapore Institute of Management and McGraw-Hill, 1990); Chew Soon Beng, *Trade Unionism in Singapore* (Singapore: McGraw-Hill, 1991); and Tan Chew Huat, *Labour Management Relations in Singapore* (Singapore: Prentice Hall, 1995).

<sup>41</sup> In 1998, the Singapore economy recorded a relatively low GDP growth rate of 1.5 percent; compared with the average of 7.2 percent annual growth rate since 1980. In January 1998, Parliament passed a motion affirming tripartism as a 'key competitive advantage of Singapore' and called on the Government, employers and unions 'to further strengthen tripartite partnership in Singapore so as to enhance Singapore's competitiveness'. See *Parliamentary Debates Singapore Official Report*, Vol 68, no 2, cols 168-250 (15 January 1998).

'enforceable benevolence' in the words of a scholar<sup>42</sup> — that has enabled the Singapore economy to be one of the most competitive in the world.

*Criminal law: protection for society*

'In criminal law legislation, our priority is the security and well being of law-abiding citizens rather than the rights of the criminal to be protected from incriminating evidence'.<sup>43</sup> This probably best sums up the policy towards criminal law legislation in Singapore. Singapore's criminal laws provide harsh sanctions for persons convicted of certain offences such as vandalism, drug trafficking and murder. Capital punishment and caning remain on the statute books. Death by hanging is mandatory for murder, kidnapping, certain drug-related offences and the unlawful possession and use of firearms. In addition, as a public protection measure, the courts can order corrective training and preventive detention.<sup>44</sup>

The clinical approach to societal scourges, like the drug menace, has resulted in legislation that shifts the burden of proof from the prosecution to the accused. The Singapore courts have also not shied away from drawing adverse inferences from an accused's silence in the face of damning evidence.<sup>45</sup> Draconian as these various legislation and case law are, strong public disapproval of such tough controls on criminal activity has been minimal. Neither is there strong public disapproval of such tough controls on criminal activity.

Another legislation originating in the colonial era, the Criminal Law (Temporary Provisions) Act (Cap 67) ('CLTPA'), provides for suspected criminal elements to be detained without trial. Introduced in 1958, the CLTPA was intended as a temporary measure. However, the continued existence of the CLTPA in the statute books has been justified on the principle of deterrence — their effectiveness in dealing with secret society and drug offences. In these cases, it is argued that witnesses are afraid of testifying for the prosecution for fear of reprisals. The government has further argued that secret societies and drug-related activity still pose a threat.<sup>46</sup> Hence, the recent extension of the CLTPA for another five years to October 2004. Lee Kuan Yew best encapsulates the utilitarian approach in criminal law in 1962:<sup>47</sup>

<sup>42</sup> For a critique of the highly restrictive system of labour law from a rights perspective, see Anthony Woodiwiss in *Globalisation, Human Rights and Labour Law in Pacific Asia* (Cambridge: Cambridge University Press, 1998).

<sup>43</sup> See note 24 above, p 155.

<sup>44</sup> As Yong CJ said, 'Corrective training is imposed with a view to the reformation of the offender and the prevention of crime, while preventive detention is imposed to protect the public': *Yusoff bin Hassan & Ors v Public Prosecutor* [1992] 2 Singapore Law Reports 1032 at 1034E.

<sup>45</sup> Section 196(2), Criminal Procedure Code applied in *Oh Laye Koh v Public Prosecutor* [1994] 2 Singapore Law Reports 385.

<sup>46</sup> *Republic of Singapore Government Gazette Acts Supplement*, No 18/1999, 14 May 1999; 'Criminal Law Act extended for 5 more years,' *The Straits Times*, 16 April 1999, p 1.

<sup>47</sup> See note 24 above, p 203.

It must be realised that if you abolish the powers of arrest and detention and insist on trial in open court in accordance with the strict laws of evidence of a criminal trial, then law and order becomes without the slightest exaggeration utterly impossible, because whilst you may still nominally have law and order, the wherewithal to enforce it would have disappeared. The choice in many of these cases is either to go through the motions of a trial and let a guilty man off to continue his damage to society or to keep him confined without trial.

*Law and the individual: community first*

It is evident that a far from universalistic stance is adopted in the approach to law in areas where adherence to international norms is regarded as being less critical in the functioning of a modern economy. Rather, an approach tending towards a ready acceptance of cultural relativism and state-defined community-based values becomes ascendant. The emphasis on duties (rather than rights) and the priority of society's interests can be distilled on closer observation.<sup>48</sup> The fundamental liberties provided in Part IV of Singapore's Constitution do not differ much from those provided in Western liberal democracies.<sup>49</sup> Article 9 provides that no person shall be deprived of his life or personal liberty save in accordance with law. Slavery and forced labour are prohibited under Article 10 while Article 11 offers protection against retrospective criminal laws and repeated trials. Equality before the law and equal protection of the law are found in Article 12. Article 13 provides for prohibition of banishment and freedom of movement. Articles 12 and 15 guarantee the freedom of speech, assembly, association and religion. Article 16 outlaws discrimination on grounds of religion, race, descent or place of birth in the realm of education.

However, Part IV of the Constitution also contains various derogation riders on the exercise of fundamental liberties. Indeed, the constitutional rights where circumscribed are 'in accordance with law' and, inevitably, such circumscription relate to the requirements of public order, public health, morality and national security. The Internal Security Act (Cap 143) stands out for mention. The Internal Security Act (ISA) provides for preventive detention without trial for renewable two-year periods. A legacy of the Malayan Emergency campaign against the communists, the ISA seeks to detain, under s 8, those '... acting in any manner prejudicial to the security of Singapore ... or to the

<sup>48</sup> Singapore has not signed the two principal conventions on human rights viz International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. See the human rights section of the United Nations' website at <http://www.un.org/rights/>.

<sup>49</sup> The best reference on fundamental liberties and constitutional law in Singapore and Malaysia is Kevin Y L Tan and Thio Li-ann (eds), *Tan, Yeo and Lee's Constitutional Law in Malaysia and Singapore* (Singapore: Butterworths, 2nd ed, 1997). For a study of Singapore's constitutional development in the context of managing political change in a post-colonial society, see Kevin Y L Tan, *The Development of Constitutional Government in Singapore 1945-95*, unpublished JSD thesis, Yale Law School, 1996.

maintenance of public order or essential services ...'. As a result of the landmark case of *Chng Suan Tze v The Minister of Home Affairs and Ors*,<sup>50</sup> the government enacted immediate amendments to the ISA prospectively overruling the decision in that case. Except for procedural matters, judicial review is disallowed for any act done or decision made by the President or the Home Affairs Minister under the ISA.<sup>51</sup>

In asserting the relevance of the ISA, the ISA and the Internal Security Department (ISD) have been affirmed as the key components of Singapore's national survival. Their continued existence is not in doubt. Indeed, while the concern of communalism remains salient, the ISD is now highlighted for its role in instilling in the population a sense of Singapore's tumultuous entry into the world of sovereign states. At the ISD's fiftieth anniversary in 1998, the Home Affairs Minister said:<sup>52</sup>

The history of ISD is obviously inextricably linked to our history of national survival — of our overcoming the violent threats of communism, communalism and *Konfrontasi* [conflict with Indonesia when Singapore was part of Malaysia]. Out of this tumultuous history of our early nationhood, the people and the Government forged a bond of trust and a shared commitment to the values of communal peace and social and political stability ... The National Education programme seeks to inform this generation of the critical constraints and realities in which Singapore as a small, multi-racial nation is embedded ... If need be, it must also renew in our young, the patriotism and the instincts and reflexes necessary for Singapore's survival in the context of these particular constraints and realities ... I commend ISD for taking the strategic step of developing an outreach programme to sensitise key Singaporean constituencies on fundamental security issues so that they will not only understand them better but also come to realise that the safe and secure Singapore they enjoy is something they all have a share in achieving and a responsibility in sustaining ... The outreach programme that ISD has embarked on is not to seek popularity but should instead be an attempt to develop new competencies, especially the ability to articulate its position on security issues cogently and to *inspire acceptance and co-operation*.

In short, a nation-building role is now part of the *raison d'être* of the ISD. While the ISA and the CLTPA are used sparingly, their continued existence

<sup>50</sup> [1989] 1 Malayan Law Journal 69.

<sup>51</sup> See Act 2 of 1989, which introduced sections 8A-D to the ISA.

<sup>52</sup> Speech by Minister for Home Affairs Wong Kan Seng, ISD's 50th Anniversary Gala Dinner, 22 August 1998. Author's emphasis.

and the effective non-availability of judicial review for ISA detentions present the danger that they could be abused.<sup>53</sup>

### *Protection of minorities*

Part of the Singapore's success story is her careful management of multi-ethnic population, which has drawn praise internationally.<sup>54</sup> Singapore's multi-ethnic population of 3.1 million comprises of 77.2 per cent ethnic Chinese, 14.1 per cent Malays, 7.4 per cent Indians and 1.3 per cent Others.<sup>55</sup> Article 152 of the Constitution provides for the Government's responsibility 'to care for the interests of the racial and religious minorities in Singapore', in particular, the 'special position of the Malays, who are the indigenous people of Singapore'. The Government is constitutionally required to 'protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language'.<sup>56</sup> In recognition of the special position of the Malays as the indigenous people of Singapore, the Syariah Court, which is constituted under the Administration of Muslim Law Act (Cap 3), has jurisdiction in matters relating to Muslim personal law such as marriages contracted under Islamic law.

Mindful of the dangers of communalism and religious extremism, there exists statutory mechanisms for the preservation of ethnic peace. Part VII of the Constitution provides for the establishment of the Presidential Council for Minority Rights (PCMR). The PCMR's general function is to 'consider and report on such matters affecting persons of any racial or religious community in Singapore as may be referred to the Council by Parliament or the Government'. The particular function of the PCMR is to draw attention to any Bill or subsidiary legislation if it is a 'differentiating measure' — that is, the Bill or subsidiary legislation discriminates against any racial or religious group. To date, the PCMR has not issued any adverse report. Nevertheless, it would be better if the shroud of secrecy that surrounds PCMR's proceedings could be removed. Currently, the PCMR's proceedings are conducted in private. It is not

<sup>53</sup> Kevin Y L Tan, 'Economic Development, Legal Reform, and Rights in Singapore and Taiwan,' in Joanne R Bauer and Daniel A Bell (eds), *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999), p 271. In 1998, 4 and 450 persons were detained under the ISA and CLTPA respectively: see *Parliamentary Debates Singapore Official Report*, Vol 69, no 12, cols 1989-1992 (20 January 1999).

<sup>54</sup> On Singapore's racial policy, see R K Vasil, *Asianising Singapore: The PAP's Management of Ethnicity* (Singapore: Heinemann Asia, 1995); David Brown, 'Ethnicity and Corporation in Singapore', *The State and Ethnic Politics in South-East Asia* (London and New York: Routledge, 1994) and Nirmala S PuruShotam, *Negotiating Language, Constructing Race: Disciplining Race in Singapore* (Berlin and New York: Mouton de Gruyter, 1998).

<sup>55</sup> The figures are for 1997 and obtained from the web-site of Department of Statistics, Ministry of Trade and Industry at <http://www.singstat.gov.sg/>. The racial classification 'Others' refers to Eurasians and other non-Malay and non-Indian minorities like the Jews and Parsees.

<sup>56</sup> For a critique of the government policies towards the Malays, see Lily Zubaidah Rahim, *The Singapore Dilemma: The Political and Educational Marginality of the Malay Community* (Kuala Lumpur: Oxford University Press, 1998).



entitled to hear objectors or examine witnesses. Further, members of the PCMR are or were members of the establishment.<sup>57</sup>

The aim of entrenching multi-racial representation in Parliament is put forth as the basis for the Group Representation Constituency (GRC) concept in the Parliamentary Elections Act (Cap 218). The GRC concept requires three to six constituencies to be contested as a group. Candidates from a single party are fielded as a slate but at least one candidate must be a member of a racial minority. The team that polls the highest number of votes carries all the seats in that GRC. According to the Government, the GRC concept is to ensure that the minority groups will have adequate representation in Parliament.<sup>58</sup> Noticing the worldwide trend of religion entering the political arena, the Maintenance of Religious Harmony Act (Cap 167A) was enacted to draw a clear demarcation between the religious and secular worlds and to prevent religion from being manipulated for political motives.

There is still much room for improvement in ethnic relations in Singapore. Prime Minister Goh Chok Tong has acknowledged that Singapore is not yet a nation.<sup>59</sup> It remains to be seen how the current effort to create 'the Singapore tribe' can be reconciled with the leadership's belief that race and religion are stronger ethnic markers than a putative national identity. The development of a truly Singaporean national identity has been hampered, in part, by Singapore's geopolitical position in a Malayo-Muslim world and the complicated history of Singapore's ties with Malaysia.<sup>60</sup>

### *Defamation of public figures*

Defamation suits taken out by the Singapore Cabinet Ministers in their personal capacities against opposition political leaders draw the most public international attention to the Singapore style of government and the use of the legal process in the practice of politics. Criticisms levelled by international human rights organisations such as Amnesty International and the International Commission of Jurists are 'directed not so much at Singapore's legal system per se as against the PAP government's use — and alleged misuse — of the court

<sup>57</sup> For critiques of the PCMR, see Thio Su Mien, 'The Presidential Council,' (1969) 1 Singapore Law Review 2; David Marshall, 'The Presidential Council,' (1969) 1 Singapore Law Review 9; Thio Li-ann, 'The Constitutional Framework of Powers,' in Kevin Y L Tan (ed), *The Singapore Legal System* (Singapore: Singapore University Press, 2nd ed, 1998), pp 101-2.

<sup>58</sup> With most parliamentary seats now being GRC-seats, the GRC concept has been criticised as gerrymandering, see Christopher Tremewan, 'Parliament, Elections and Parties,' in *The Political Economy of Social Control in Singapore* (New York: St Martin's Press, 1994). See also Rahim (note 56 above), pp 77-9.

<sup>59</sup> 'PM: S'pore is not a nation yet,' *The Straits Times*, 6 May 1999, pp 1, 28-9.

<sup>60</sup> See Lee Kuan Yew's controversial observations on the Malaysian Malay quest for ethnic dominance when Singapore was part of Malaysia from 1963-65: Lee Kuan Yew, *The Singapore Story: Memoirs of Lee Kuan Yew* (Singapore: Times Editions and The Straits Times Press, 1998). Indeed, the colour imagery employed by then Indonesian President Habibie when he described Singapore as 'a tiny red dot in a sea of green' is not lost on the Singapore leadership.

process'.<sup>61</sup> In this connection, the courts are placed in an unenviable position of having to strike a delicate balance between the constitutional right of free speech and protecting the reputations and integrity of Singapore's leaders. This is another example of the subtle tension and dilemma of achieving constitutional protection afforded to individuals and the need to protect the larger interests of the community.

In this instance, the need to maintain the integrity of the system and the leaders triumphs over the individual's freedom of expression. In some Western liberal democracies, public figures are expected to tolerate a higher level of scrutiny, criticism and comment that would otherwise be defamatory in normal circumstances. However, such is not the case in Singapore where the government has argued that it is the integrity of Singapore's political system that is at stake. Further, it has been argued that a relaxation of the defamation law governing public figures would create difficulty in attracting the best people to serve in the political leadership. Prime Minister Goh testified in the defamation suit against opposition politician J B Jeyaratnam that:<sup>62</sup>

We are a different society. In Singapore, we believe that leaders must be honourable men, gentlemen or *junzi* (a Confucian gentleman), and if our integrity is attacked, we defend it ... If leaders and politicians do not defend their integrity, they are finished ... So, each time our integrity is impugned, we come out strongly and go to the courts to defend it. If you do not do that, over time, politics in Singapore is going to degenerate into politics like some other countries where leaders are called liars and cheats and nothing is done.

The courts have been inclined to accept such an argument and accord a heavier weight to the collective interests. In *Tang Liang Hong v Lee Kuan Yew*, Judge of Appeal L P Thean said that politicians:<sup>63</sup>

... do not forfeit the protection of their reputations merely because they have entered the political arena and assumed high offices. Freedom of expression is perfectly legitimate so long as it does not encroach upon the realm of defamation.

As Kevin Tan notes:

In public law, human rights groups feel the courts have been overly deferential to the Executive. By deferential I do not mean they are biased,

<sup>61</sup> See 'Is Singapore's legal system getting a bad name?', *The Straits Times*, 25 October 1997.

<sup>62</sup> Quoted in *ibid*. The case is reported as *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 3 Singapore Law Reports 337 (CA); [1998] 1 Singapore Law Reports 547 (HC).

<sup>63</sup> [1998] 1 Singapore Law Reports 97 at p 139.

or compliant, but that, between two possible choices, greater benefit of the doubt is given to the Executive than to the individual or any other group. There is a generally conservative approach to adjudication.<sup>64</sup>

This statist image of law is congruent with a corporatist conception of state and society. Within this paradigm, the dominance of state interests and objectives flows from the state and society being viewed as an organic entity with state-interpreted community interests having primacy.

#### *Managing civil society*

The management of the non-governmental sector of society also sees the guiding hand of the law. This segment of society has been termed by the government as 'the people sector' (as opposed to 'civil society'). The people sector is envisaged as part of the corporatist set-up and practising a consensual form of dialogue with the state. As of 1 April 1998, there were 5,208 registered societies in Singapore.<sup>65</sup> However, while the large number of societies in Singapore seems to suggest a thriving civil society, the constitutional rights of freedom of association and of assembly are subjected to the requirements of public peace, welfare or good order. 'Societies' under the Societies Act (Cap 311) encompasses the gamut of non-governmental organisations and quasi-governmental organisations including school alumni, political parties, special interest groups and residents' associations. The Societies Act prescribes the need for registration otherwise the society will be illegal. A society will not be registered if it is contrary to national interest. There are penalties ranging from imprisonment to fines for organisers and members of an illegal society as well as for allowing the premises to be used for the unlawful assembly. Furthermore, a society, unless it is a registered political party, is proscribed from engaging in politics.

While there is a growing community involvement with the growth of many civic organisations and non-governmental organisations, the developments suggest an expanding 'civic' society, which should not be equated with a 'civil' society as is commonly understood. Whether this civic consciousness translates to a more participatory style of politics is in doubt. Civil society — understood here as an engine or agent of political democratization — is a misnomer in Singapore given the dominance of the PAP and the depoliticisation of the Singapore polity. Indeed, Lam asserts that relatively high-profile groups within

<sup>64</sup> Quoted in note 61 above. See also Thio Li-ann, 'An "i" for an "I"? Singapore's Communitarian Model of Constitutional Adjudication' (1997) 27 Hong Kong Law Journal 152.

<sup>65</sup> *Supplement to Government Gazette*, No 10/98, 17 July 1998.

the nascent civil society are but 'peripheral and exist only at the sufferance of the state'.<sup>66</sup>

Indeed, civil society is not about contending voices that go against the grain of consensus so valued in Singapore. It ought to be viewed as providing an extra-judicial check against weakness in governance and the abuse of power. It is well and good that Singapore has had good men to lead and build institutions, which have engendered a culture of good governance. But the uncertainty that good men will continue to lead Singapore has been one of the rationale behind the institution of the elected President: that of safeguarding Singapore's substantial financial reserves and key institutions such as the civil service in the face of a less than forthright government.<sup>67</sup>

A vibrant civil society through the participation of the citizenry will help strengthen the political fabric and the emotional ties that Singaporeans have towards Singapore. A genuine sense of belonging would engender 'emotional stakeholding' of the citizenry towards Singapore. A vibrant civil society would also buttress good governance in the Singapore polity. Civil society can help ensure that laws, public institutions and sound values are safeguarded — through an emphasis on the substance rather than form of law — beyond the veil of legalism.

### Universalism of Singapore's commercial laws

By contrast, a study of Singapore's economic policy and legal framework will highlight the salience of laws and the legal system in creating an economic environment that is universal, incorporating international law, facilitating business operations in Singapore. Singapore has consistently been ranked as one of the freest economies in the world.<sup>68</sup> To this end, the government has spared no effort in building an efficient and effective legal system complemented by innovative legislation and stringent enforcement. Since the early 1990s, the court system underwent radical changes that shortened the period between the filing of the suit and its resolution such that even lawyers had difficulty coping.<sup>69</sup> To expedite the resolution of cases before the courts, greater use is

<sup>66</sup> Lam Peng Er, 'Singapore: Rich State, Illiberal Regime,' in James W Morley (ed), *Driven by Growth: Political Change in the Asia-Pacific Region* (Singapore: Institute of Southeast Asian Studies, revised ed, 1999), pp 272-3. A recent discussion of civil society in Singapore is Chua Beng Huat's 'State and Society: Ambling Towards Greater Balance,' in Arun Mahizhnan and Lee Tsao Yuan (eds), *Singapore: Re-Engineering Success* (Singapore: Oxford University Press, 1998).

<sup>67</sup> For a multi-disciplinary treatment of the institution of the elected President, see Kevin Y L Tan and Lam Peng Er (eds), *Managing Political Change in Singapore: The Elected President* (London and New York: Routledge, 1997).

<sup>68</sup> The survey is the *Economic Freedom of the World, 1998-1999 (Interim Report)*, see 'Singapore second freest economy,' *The Straits Times*, 6 November 1998, p 3. In fact, the World Competitiveness Yearbook, Global Competitiveness Report and the Political and Economic Risk Consultancy have consistently rated the competitiveness of Singapore's economy to be among the best.

<sup>69</sup> 'Courts moving "too fast" for lawyers,' *The Straits Times*, 11 May 1999, pp 2, 34-5. For further information on judicial reforms, see *Supreme Court Singapore: The Re-Organisation of the 1990s* (Singapore: Supreme Court of Singapore, 1994).

made of information technology. Documents for use in legal proceedings can be filed with the courts' registries electronically.

A very recent innovation is the forthcoming establishment of the Commercial Criminal and Civil (District) Courts in anticipation of increasingly complex criminal and civil actions which would come to the Singapore courts for adjudication as Singapore seeks to be a key player in the global market.<sup>70</sup> Furthermore, legislation is now before Parliament to allow joint ventures and alliances between Singapore and offshore law firms to further strengthen the legal infrastructure as Singapore seeks to be a regional business and financial hub.

Given the hegemonic control of the ruling party in Parliament, it is imperative that any challenge to the judiciary's lack of independence is defended resolutely by the government. During the Parliamentary debate on the independence and integrity of Singapore's judiciary in 1995, Senior Minister Lee Kuan Yew said:<sup>71</sup>

But when the Government, including me, takes a matter to court or when the Government is taken by private individuals to court, then the court must adjudicate upon the issues strictly on their merits and in accordance with the law. To have it otherwise is to lose ... our standing and ... our status as an investment and financial centre. The interpretation of documents, of contracts in accordance with the law is crucial. Our reputation for the rule of law has been and is a valuable economic asset, part of our capital, although an intangible one. It has brought to Singapore good returns from the MNCs, OHQs, the banks, the financial institutions, and the flood of capital to buy up properties in Singapore.

In the various surveys cited, Singapore scored well in areas of the legal system assessment such as legal enforcement of commercial contracts, availability of alternative modes of dispute resolution and the efficiency of the courts and law enforcement. However, Singapore did not rank as well when it came to the intangibles like 'impartiality of arbitration' and 'justice'.<sup>72</sup>

### *Corruption*

The Asian economic crisis, with its attendant socio-political ills, has driven home the importance of preventing corruption. In Singapore, the anti-corruption drive is designed to 'minimise or remove the conditions of both incentives and opportunities that make individual corrupt behaviour

<sup>70</sup> See Chief Justice's Response at the opening of the Legal Year 2000, available at <http://www.supcourt.gov.sg/announcements/speeches/index.html>

<sup>71</sup> *Parliamentary Debates Singapore Official Report*, Vol 65, no 2, col 236 (2 November 1995).

<sup>72</sup> See 'Is Singapore's legal system getting a bad name?' *The Straits Times*, 25 October 1997.

irresistible'.<sup>73</sup> A nearly corruption-free Singapore helps promote Singapore as a good place for trade and investment. It also ensures that everyone is treated equally in various aspects of life. The legal disincentives are the tough legislation and enforcement mechanisms wherein there is zero tolerance for corruption.

The centrepieces of the anti-corruption infrastructure are the Prevention of Corruption Act (Cap 241), the Corruption (Confiscation of Benefits) Act (Cap 15A) and the Corrupt Practices Investigation Bureau (CPIB). Established in 1952, the CPIB is an independent body which investigates and aims to prevent corruption in the public and private sectors in Singapore. The CPIB Director reports directly to the Prime Minister. Besides bringing corruption offenders to book, the CPIB carries out corruption prevention by reviewing the work methods and procedures of corruption-prone departments and public bodies. It tries to identify administrative weaknesses in the existing systems, which could facilitate corruption and malpractice and recommends remedial and preventive measures to the heads of departments concerned. The CPIB also regularly conducts lectures and seminars to educate public officers, especially those who come into contact with the public, on the pitfalls and avoidance of corruption. The powers of the CPIB provided under the Prevention of Corruption Act are extensive and include the power to investigate and examine bank accounts and assets of officials under investigation.

In order to attract the best to the civil service and the political leadership and to prevent corruption, senior civil servants and Ministers are among the best paid in the world.<sup>74</sup> The challenge is to continue to remain alert to corruption of a non-pecuniary nature, which some scholars have labelled as 'particularistic privileges' that would undermine this cornerstone of Singapore's hard-earned success and prosperity.<sup>75</sup>

### *Law, safe and open business Environment and the knowledge-based economy*

The role of law in creating a conducive environment for economic activity is demonstrated most vividly in the creation of statutory bodies that spearhead Singapore's trade, investment and economic policies viz the Economic

<sup>73</sup> Jon S T Quah, 'Singapore's Model of Development: Is it Transferable?' in Henry S Rowen (ed), *Behind East Asian Growth: The Political and Social Foundations of Prosperity* (London and New York: Routledge, 1998), p. 109. See also Tan Ah Leak, 'The Experience of Singapore in Combating Corruption,' in Rick Stapenhurst and Sahr J Kpundeh (eds), *Curbing Corruption: Toward a Model for Building National Integrity* (Washington, DC: World Bank, 1999); and Jon S T Quah, 'Corruption in Asian Countries: Can it be Minimized?' (1999) 59 Public Administration Review 483.

<sup>74</sup> The reasoning behind the 'competitive salaries' for civil servants and Cabinet Ministers can be found in the White Paper on *Competitive Salaries for Competent and Honest Government* (Cmd 13 of 1994).

<sup>75</sup> Corrupt practices take a variety of forms and go beyond the conventional understanding of pecuniary benefit to embrace the gain of privilege. See Paul Hutchcroft, 'The Politics of Privilege: Assessing the Impact of Rents, Corruption and Clientelism on Third World Development' (1997) 45 Political Studies 639. See also Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (New York: Cambridge University Press, 1999).

Development Board (EDB) and the Trade Development Board (TDB).<sup>76</sup> Singapore has demonstrated legal innovation in marrying law, the administrative framework and the demands of an open economy.<sup>77</sup> International conventions are increasingly incorporated into local legislation. For instance, the Carriage of Goods by Sea Act (Cap 33) has incorporated the Hague-Visby shipping rules. Likewise, the convention on international sales of goods has been enacted locally through the Sale of Goods (United Nations Convention) (Cap 283A). This harmonisation with international conventions and model laws is likely to become more prevalent. Singapore has also acceded to international treaties governing shipping, civil aviation and telecommunications that 'allow for international influence and uniformity as regards these linkages between Singapore's economy and the world'.<sup>78</sup>

The present thrust in Singapore's development plans is to build a 'knowledge-based economy'. The need to value add the goods and services of Singapore origin is necessitated by the lack of natural resources and the inability to compete with its neighbours on production costs. Indeed, Singapore's best economic option appears to be in the realm of high technology and information technology. Hence, the need for sound protection of intellectual property gains increased importance. Besides common law remedies, Singapore has a comprehensive statutory regime for the intellectual property rights that endeavours to adopt the prevailing international practice. The Patents Act (Cap 225), which came into effect on 23 February 1995, replaced the old system of registration in which there was a need to obtain a British patent or an European patent designating Great Britain before patent protection could be obtained in Singapore. Under the 1995 Act, original filing of patent applications in Singapore is sufficient. The Copyright Act (Cap 63) and Trade Marks Act (Cap 332) are also updated regularly to give effect to international conventions to which Singapore is a signatory and also to ensure that the laws are not an unnecessary hindrance to cutting edge research and technology.

To further develop Singapore's position as an IT and knowledge hub and to capture the growing market in electronic commerce (e-commerce), there is a legislative platform that is continuously updated to keep pace with anticipated technological changes and international norms. These legislation include the recently enacted Electronic Transactions Act 1998 (Cap 88) and the recently amended Computer Misuse Act (Cap 50A). Even the century old Evidence Act (Cap 97) is updated to ensure that evidence in cyberspace is admissible in court proceedings. Together with a strong enforcement mechanism, the

<sup>76</sup> The relevant statutes are the Economic Development Board Act (Cap 85) and the Trade Development Board Act (Cap 330).

<sup>77</sup> The pioneering study in this area, although now dated, is Philip N Pillai's *State Enterprise in Singapore: Legal Importation and Development* (Singapore: Singapore University Press, 1983).

<sup>78</sup> Tay (note 2 above), p 484. A useful appendix on Singapore's accession to significant international treaties can be found at pp 496-506.

legislative framework is well equipped to ensure that 'responsible "Netizens" can operate in relative security'.<sup>79</sup>

In order to promote Singapore as a total business centre, the government has provided the facilities for alternative dispute resolution for commercial matters. As mentioned earlier, alternative dispute resolution (ADR) viz mediation, arbitration and negotiation is strongly encouraged as a quicker, more affordable and effective form of dispute resolution. Parties in a legal suit are always encouraged to attempt out of court settlements. Effectiveness comes in that parties are more likely to maintain their relationships, business or otherwise, through a more consensual form of dispute resolution. Under the International Arbitration Act (Cap 143A), the Singapore International Arbitration Centre (SIAC) is the statutory appointing authority to oversee international arbitration in Singapore.<sup>80</sup> A Singapore arbitral award is easily enforceable internationally across over 100 states, including the United Kingdom and the United States. Singapore has acceded to the UN Convention on The Recognition and Enforcement of Foreign Arbitral Awards 1958.

#### *Media and the paradox of expanding markets*

Information is vital in the commercial realm and the management of the mass media in Singapore demonstrates the constant tensions between the need for information in an open economy and the freedom of speech. In 1998, there were 203 accredited correspondents from 73 international news agencies, newspapers and broadcast agencies in Singapore.<sup>81</sup> Taking advantage of the financial, information and printing hub that Singapore offers, many international newspapers and magazines are published or printed there for the Asia-Pacific region.

To balance the need of business and commerce for access to information with the need to ensure that information on Singapore is portrayed accurately, Singapore has instituted legislation to ensure that the government has a 'right of reply' where there are inaccuracies. For instance, under the Newspaper and Printing Presses Act (Cap 206), in order to obtain a permit to import, sell and/or distribute an offshore newspaper in Singapore, the proprietor of an offshore newspaper is required to furnish a cash deposit or bankers' guarantee of S\$200,000. This ensures compliance with the requirement that the permit holder (proprietor) 'irrevocably recognises that the Singapore courts have jurisdiction over all disputes which may arise out of or in connection with any

<sup>79</sup> Keynote address by Professor S Jayakumar, Singapore's Minister of Law, Opening of the International Crime and Technology Conference in Singapore, 14 October 1998; available at <http://www.gov.sg/mita/pressrelease/98101401.htm>

<sup>80</sup> Information on the SIAC can be obtained from its website, <http://siac.tdb.gov.sg/>.

<sup>81</sup> *Singapore Facts and Pictures 1999* (Singapore: Ministry of Information and the Arts, 1999), p 200.

<sup>82</sup> See s 16 of the Newspaper and Printing Presses Act (Cap 206).



matter contained in the newspaper. It also gives Singapore courts jurisdiction in such disputes.<sup>82</sup>

For the Singapore government, the premise is that it must be allowed to state its side of the story and respond to inaccuracies and misinformation. Such a requirement might appear stringent and might encourage self-censorship but it has not prevented foreign media organisations from using Singapore as a base for their regional reporting.<sup>83</sup>

### **British legacy in Hong Kong SAR: *Tongchuan yimeng* (Same bed, different dreams)?**

The people of Hong Kong should never be confused over how to safeguard their own interests. They will hear many voices cheering them on to fight China for more democracy ... From 1 July 1997, Hong Kong's destiny is tied to China's. Hong Kong is a part of China and must share China's destiny ... If Hong Kong fails, China will suffer; if China succeeds, Hong Kong will succeed ... Fifty years is not a long time in the history of people, and it does not make sense in the next 50 years to keep Hong Kong as separate and distinct from the mainland as possible. There is no future in that.<sup>84</sup>

British rule in Hong Kong had endowed her with a reasonably efficient legal system, civil service, administrative framework and a laissez-faire economic system that endeared it to the international capitalist world.<sup>85</sup> The development of Hong Kong SAR would be an interesting case in examining how a different value and legal system would influence its course of governance and development. Questions have been raised about the future of the British legacy since the return of Hong Kong to Chinese sovereignty on 1 July 1997.<sup>86</sup> Values, attitudes and culture differ and the handover negotiations demonstrated the stark differences in issues such as rule of law and democracy. Despite Beijing's commitment to the 'one country, two systems' policy until 2047, it should be remembered that the Chinese way of governance is the antithesis of the British

<sup>83</sup> For the argument that the media's expanding markets can be a force for self-censorship within East Asia, see Garry Rodan, 'Asia and the International Press: The Political Significance of Expanding Markets,' in Vicky Randall (ed), *Democratization and the Media* (London and Portland, OR: Frank Cass, 1998). For critiques on the control of the media in Singapore, see Francis T Seow, *The Media Enthralled: Singapore Revisited* (Boulder, CO: Lynne Rienner, 1998) and Garry Rodan, 'The Internet and Political Control in Singapore' (1998) 113 *Political Science Quarterly* 63.

<sup>84</sup> Speech by Singapore's Senior Minister Lee Kuan Yew at the Pacific Rim Forum, Hong Kong, 27 June 1997. The speech is available at the Singapore Ministry of Information and the Arts website, <http://www.gov.sg/mita/pressrelease/97062802.htm>.

<sup>85</sup> A self-congratulatory account of Britain's management of colonial Hong Kong is Robin McLaren, *Britain's Record in Hong Kong* (London: Royal Institute of International Affairs, 1997).

<sup>86</sup> There are many 'doomsday' accounts of Hong Kong's reversion to Chinese sovereignty. See, for example, Alvin Rabushka, *Freedom's Fall in Hong Kong* (Stanford, CA: Hoover Institution on War, Revolution and Peace, 1997) and Stephen Vines, *Hong Kong: China's New Colony* (London: Aurum Press, 1998). A more balanced assessment is Wang Gungwu and John Wong (eds), *Hong Kong in China: The Challenges of Transition* (Singapore: Times Academic Press, 1999).

and that 'two systems' cannot mean countervailing systems. Lucien Pye commented that:<sup>87</sup>

The erratic behaviour of the Chinese state in both domestic and international affairs is exacerbated by the Chinese belief that benevolent government requires rule by men and not by law. (The Chinese tradition of rule by law was one of arbitrary and harsh authoritarianism.) The Confucian ideal of rule by superior men acquired a new vigour when China adopted Leninist Élitism, and the Confucian-Leninist hybrid produced a system that gives successive top rulers extraordinary freedom. Consequently, and paradoxically, ultimate power in a society that is otherwise group oriented rests largely in the hands of individual personalities.

Barring any drastic regime change in China, the tentative indications are that the legal and political system will increasingly be brought within Beijing's sphere of influence where individual rights are concerned. Similar to Singapore, there is likely to be a dichotomy in Hong Kong SAR's approach towards commercial law and the law relating to personal liberty and civil society. As a 'special administrative region', and not autonomous region, one should not expect too much latitude and autonomy where the political system is concerned; its political development cannot be contradictory to the prevailing norms in China. Hong Kong SAR cannot be the bastion for the anti-China establishment.

Like Singapore, universalism is likely to be the attitude adopted with regards to Hong Kong SAR's economic system. The focus is to ensure its continuing prosperity and as a viable conduit for investments flowing into China, especially the coastal and southern areas. Hong Kong SAR can function in this regard as a positive agent of change vis-a-vis China in the economic realm. Indeed, the law has played a crucial role in the economic reforms since Deng Xiaoping revolutionized Chinese society recovering from the aftermath of Mao's misguided Cultural Revolution.<sup>88</sup>

However, such a catalytic role is not envisaged in the political arena, especially where individual rights and freedoms are concerned. Cultural relativism and communitarian-based understanding of rights and obligations would predominate. This is buttressed by the persistent and abiding fear of instability and disorder ('luan') and a heightened sensitivity to any perceived undermining of Chinese sovereignty and foreign interference. The resurgence

<sup>87</sup> Lucian W Pye, *The Spirit of Chinese Politics* (Cambridge, MA: Harvard University Press, New edition, 1992), p 251. For a recent comprehensive overview of Chinese law, see Chen Jianfu, *Chinese Law: Towards an Understanding of Chinese Law, its Nature and Development* (The Hague: Kluwer Law International, 1999), especially pp 355-363.

<sup>88</sup> For a discussion on the role of law in supporting economic reforms under the 'Open Door' policy in PRC from 1978-1995, see Katharina Pistor and A Philip Wellons, *The Role of Law and Legal Institutions in Asian Economic Development: 1960-1995* (New York: Oxford University Press, 1998).

of Confucianism, Chinese civilizational discourse (by implication, anti-westernisation) and Chinese nationalism are likely to lead Beijing to ensure that the socio-political discourse in Hong Kong will not be anathema to the mainland.<sup>89</sup> In this regard, an autochthonous politico-legal system in the Hong Kong SAR is in the making, which will modify British-inspired institutions and values. This development is in a constant state of flux but the embedding of law, values and culture — as understood and defined by Beijing — will be an inevitable consequence. Concerns that the Hong Kong SAR model will wholly converge with that of mainland China is probably unwarranted as the former will be the template for any future attempt at China's and Taiwan's reunification.<sup>90</sup> For a liberal but undemocratic British Crown colony, democratization in the 1980s and 1990s in Hong Kong was accompanied by the belief that the rule of law could counter the patronizing traditionalism of a post-Leninist China.<sup>91</sup> These changes, accelerated by the Tiananmen Incident and the arrival of the last British Governor Christopher Patten, precipitated a whole set of legal and political changes.<sup>92</sup> Since July 1997, amendments to various Ordinances like the Bills of Rights, Societies, Public Order and Personal Data Privacy are indicative that Beijing is not prepared for the status quo where its political fundamentals are perceived to be threatened. Much as Hong Kong SAR is the economic jewel and test case for cross-Straits reunification, China will not tolerate the undermining of her sovereignty. Indeed, sovereignty, order and national security — widely interpreted by the state — have primacy over prosperity. Ultimately, one China is more imperative than two systems.

Hong Kong's sterling economic performance under British rule as well as China's own economic performance will provide comfort to the Beijing authorities that democratic institutions are not necessary for rapid economic

<sup>89</sup> A recent discussion on the revival of Chinese nationalism incorporating Chinese civilizational pride and Confucianism is Zheng Yongnian, *Discovering Chinese Nationalism in China: Modernization, Identity, and International Relations* (Cambridge: Cambridge University Press, 1999). See also Lecture entitled, 'Chinese Culture and Politics' by George Yeo, Minister For Trade & Industry, Singapore, at the Golden Jubilee Anniversary of New Asia College, Hong Kong, 29 October 1999. Text of speech available at <http://www.gov.sg/mita/presrelease/99102902.htm>.

<sup>90</sup> See, for instance, Michael Yahuda, *Hong Kong: China's Challenge* (London and New York: Routledge, 1996).

<sup>91</sup> Carol Jones argues that the 'attachment' to the rule of law has relatively recent origins in Hong Kong, beginning in the 1970s: 'Politics postponed: law as a substitute for politics in Hong Kong and China,' in Kanishka Jayasuriya (ed), *Law, Capitalism and Power in Asia: The Rule of Law and Legal Institutions* (London and New York: Routledge, 1999).

<sup>92</sup> The literature on political developments in Hong Kong since the signing of the Joint Declaration is voluminous. See, for example, Ian Scott (ed), *Institutional Change and the Political Transition in Hong Kong* (New York: St Martin's Press, 1998); Chris Patten, *East and West: The Last Governor of Hong Kong on Power, Freedom and the Future* (London: Macmillan, 1998); Judith M Brown and Rosemary Foot, eds, *Hong Kong's Transitions, 1842-1997* (New York: St Martin's Press, 1997).

growth.<sup>93</sup> As Lynn White III succinctly describes the challenge posed to Hong Kong's legal system and political masters:<sup>94</sup>

Tycoons and democrats alike will need a stable rule of law in Hong Kong's future. They may hope that Hong Kong's judicial system will not become merely a part of the executive, as is still the national norm. Reformers in Beijing may nonetheless raise confidence that laws can become more impartial, both in Hong Kong and in China. If they fail to do so, the habit of trying to substitute personal relationships for reliable laws may reach its limits. Both are needed, as the linked economies of the PRC and Hong Kong expand further.

The right of abode and the flag desecration cases have been cited as being indicative of the trend towards the clipping of the wings of the Hong Kong SAR's judiciary.<sup>95</sup> Although some of the concerns are valid, the jury is still out on the future of Hong Kong's way of life. The political matrix in China is still in a state of flux and predicting is hazardous. However, if developments in Hong Kong SAR are not perceived to compromise stability and order to the larger Chinese polity, then it is likely that the Hong Kong way of life would prevail, albeit with the likelihood of some influence from China. The vibrant democracy movement and international opinion would help ensure that Beijing factors in Hong Kong's socio-political matrix before making any drastic changes to the Hong Kong way of life. China has signed (although not ratified) the international covenants on civil and political rights as well as economic, social and cultural rights and has agreed to file annual reports on the human rights situation in Hong Kong. It is likely that a convergence along Beijing terms would be encouraged in the socio-political arena, while simultaneously absorbing Hong Kong SAR's economic norms. Beijing would also be mindful of the need for Hong Kong SAR's key institutions to maintain their legitimacy. These institutions will also assist in ensuring Hong Kong's identity as a SAR (not as a colony) and Hong Kong people as citizens of the PRC. This is a *sine qua non* if society's centrifugal forces are to be kept in check. In the final analysis,

<sup>93</sup> Cf Pranab Bardhan, 'Democracy and Development: A Complex Relationship,' in Ian Shapiro and Casiano Hacker-Cordon (eds), *Democracy's Value* (Cambridge: Cambridge University Press, 1999).

<sup>94</sup> Lynn White III, Forward: 'One Country as a Changed System,' in Ming K Chan (ed), *The Challenge of Hong Kong's Reintegration with China* (Hong Kong: Hong Kong University Press, 1997), p xii. Alvin So in his *Hong Kong's Embattled Democracy: A Societal Analysis* (Baltimore, MD: Johns Hopkins University Press, 1999) argues that Hong Kong under China's rule would resemble the limited democracy Hong Kong experienced in the 1980s. Then the business class in Hong Kong, in alliance with the Chinese government, slowed down the headlong rush towards democratization before the handover. Indeed, the business-government linkages would be a development worth closer study.

<sup>95</sup> See *Far Eastern Economic Review*, 13 January 2000, p 25; 30 December 1999, p 91; 23 December 1999, p 18; 16 December 1999, pp 16-18. For a case comment on the right of abode case, see Bing Ling, 'Can Hong Kong courts review and nullify acts of the National People's Congress?' (1999) 29 *Hong Kong Law Journal* 8.

legitimacy and 'political credibility', measured by predictability and stability of political regimes, rather than high degrees of political democracy would be of greater importance in the continued prosperity of any polity.<sup>96</sup>

### Concluding remarks

Compatible with international norms, the legal framework in Singapore provides adequate protection and inspires confidence within the international trading and investing community. Singapore will maintain and enhance its efficient legal system and laws.<sup>97</sup> Given Singapore's heavy reliance on foreign trade and investments, the need to provide a conducive environment for such economic activities is imperative. Law is therefore regarded as a fundamental economic value and capital that should be harnessed.

In the domain of legal protection for individuals, the legal regime in Singapore provides sufficient protection although certain pieces of legislation sit oddly with the highbrow protection enshrined in the Constitution. Singapore's multi-ethnic composition and the overriding importance of law and order supplemented by the PAP government's success in generating economic wealth have legitimated the state's preference for tough laws as part and parcel of good governance. In this sense, the adherence to and heavy reliance on law is also a political value that is greatly resorted to in instilling the value of good governance and the cultivation of social discipline.

The thrust of Singapore's approach to law and the legal system can be characterised as 'law as development'. Harding observes that 'law has been seen primarily as an instrument of social engineering rather than an expression of a particular balance of principles defined politically or culturally and regarded as an embodiment of justice'.<sup>98</sup> To entrench the rule of law, notwithstanding that instrumentalism has been effectively mobilised in building a viable state that is economically prosperous, the natural progression is to achieve the amalgamation of law as development and law as the embodiment of justice. The universal legal norms in the commercial realm co-exist with the particularistic legal standards in the non-commercial realm. This tension is evident when a foreigner living or working in Singapore gets entangled in a criminal case. The norms a foreigner is used to are often in conflict with the standards here. While cultural relativism — and with it the value system of

<sup>96</sup> This is the thesis in Silvio Borner, Aymo Brunetti and Beatrice Weder, *Political Credibility and Economic Development* (New York: St Martin's Press, 1995).

<sup>97</sup> See *Supreme Court Singapore: Excellence into the Next Millennium* (Singapore: Supreme Court of Singapore, 1999).

<sup>98</sup> Andrew Harding, 'The Singapore Model of Law and Development and Its Clonability: "Smart" Laws in the Intelligent Island,' Paper presented at the Conference on Law and Development in East and Southeast Asia, organised by the International Institute of Asian Studies, Leiden, 29-30 January 1998.

Singapore society — is likely to be called upon to legitimise the law as development approach in Singapore, the challenge remains for Singapore jurisprudence to marry the twin concerns of development and justice. As Singaporean society matures, the twin needs for law as development and law as justice become critical in ensuring that the political and legal systems continue to maintain and enhance their legitimacy. To some extent, the same can be said for the Hong Kong SAR.

Laws govern almost every aspect of a Singaporean's life from birth to death. In the commercial realm, with the dictates of global realities, the internationalisation of law has prevailed. The careful balance of rights and obligations found in the commercial laws is not replicated fully in laws relating to individual freedom and civil society. Here the fundamental concerns of law and order, public morality and national security are foremost. In this scheme of things, the 'junzi' (Confucian gentleman) and 'li' (proper behaviour in sync with societal order and, norms through moral propriety) are dominant themes.<sup>99</sup> If 'fa' (law) is appreciated not as an end in itself but also as the embodiment of both justice and development, good governance would be further entrenched. Singapore's central concern with good governance and the internationalisation of its economy offer the promise that universal principles would eventually permeate into the non-commercial sectors. How soon that will happen depends on whether the law is envisaged as having a role beyond social control, social discipline and social engineering. Law has been a means to an end since independence and it has served Singapore and her people well. The next step is to treat law as an end in itself — that of engendering justice and the development of legal rationality alongside economic rationality.

<sup>99</sup> On the compatibility of Confucianism and human rights and that 'Confucianism values' are universal values too, see Louis Henkin, 'Confucianism, Human Rights and "Cultural Relativism"' in Wm Theodore de Bary and Tu Weiming (eds), *Confucianism and Human Rights* (New York: Columbia University Press, 1998).